IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 815 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BHERULAL VIRAJI KUMAVAT

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED FOR MR RAJESH M AGRAWAL for Appellant.
MR AJ DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

Date of decision: 24/09/98

ORAL JUDGEMENT (Per J.N. Bhatt, J.)

In this appeal under Section 374 of the Code of Criminal Procedure, 1973 ("Code"), against the judgment of conviction under Section 20(b)(ii) of Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act"), and sentence of 10 years' rigorous imprisonment and fine of

Rs.1,00,000/-, in default further imprisonment of 2 years and conviction under Section 66(1)(b) of the Bombay Prohibition Act, 1949, and sentence rigorous imprisonment for 3 months and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for 15 days, recorded by learned City Civil and Additional Sessions Judge, Court No.9, Ahmedabad, on 20.8.1990 in Sessions Case No.62 of 1990, we are called upon to determine and decide as to whether the impugned order of conviction and sentence is justified or not.

The appellant is original accused and the respondent is State of Gujarat. The appellant, hereinafter, will be referred to as "accused" for the sake of convenience and brevity. Accused was prosecuted before the trial Court. At this stage, therefore, let us have a relevant spectrum of material facts giving birth to this appeal. As per the prosecution case, Police Inspector of Maninagar Police Station, Ahmedabad, Mr. I.M. Malek, P.W. 8, who is examined at Ex.32, received secret information, at about 11.00 A.M., on 19.12.1989, when he was on duty at the Police Station.

The information received was to the effect that, a person dressed in a white pant and bush shirt, and wearing a woollen pull-over of dark brown colour has brought a huge quantity of CHARAS and was to deliver the same to some person near Shah-Alam Darwaja, at Ahmedabad, before 2.00 P.M. Superintendent of Police, Mr. S.G. Bhati, was also present when such information was received by the P.I. That is how P.I., Malek, decided to conduct a raid and search, for which he called two Panchas, P.W.1-Rajbahadur Nathusing, Ex.11 and P.W.2-Chandrakant Chunilal, Ex.12, at the Police Station and apprised them of the contents of the secret information he had received. Thereafter, preliminary Panchnama came to be drawn in presence of Panch between 11.15 and 11.30 hours on the same day.

The police party with the Panchas started its voyage for the place where they suspected the contraband article and the person to be, as per the secret information received. They kept a watch in the vicinity of area known as "F" Colony Corner, near Shah-Alam Darwaja, Ahmedabad. 15 minutes thereafter, one person of the description stated in the said information was seen approaching on the road leading from Shalimar Talkies to Shah-Alam Darwaja. P.I., Mr. Malek, having spotted him, invited the attention of the Panchas and officers of the Police, who were present, including S.P., Mr. Bhati. They found that the suspected person was carrying two bags, one made

of a black rexine and the other a cloth bag of dark colour and there was heavy weight in both the bags.

P.I. Malek stopped him and inquired of him. He was asked to give his name and address. That person narrated his name as BHERULAL VIRAJI KUMAVAT, appellant-original accused. He was a resident of Pali, in the state of Rajasthan. On further inquiry, the bags carried by the said person were checked and, upon the checking, some material in plastic bags was found from the black rexine bag. 14 packets of black colour substance wrapped in red colour plastic papers were found below "loincloth" of green colour with design.

Out of the said 14 packets, 8 packets were bigger in size, admeasuring 11" x 7 1/2", whereas remaining 6 packets were, comparatively, smaller, admeasuring 11" 6". On each packet there was a writing in the Urdu script on both ends.

In the other bag of dark colour, again 20 packets of 11" x 8" size were found. These packets were wrapped in red coloured plastic papers and contained a black colour substance. The substance contained in the said 34 packets was suspected to be CHARAS from the smell and, in order to confirm through a preliminary test, P.I., Mr. Malek, had called for "Drug Identification Kit" from the Crime Branch and the test was carried out in presence of Panchas and police personnel and, upon the preliminary test, it was noticed that the substance was CHARAS. On being inquired, the accused stated that he was not holding valid licence or permit.

The muddamal article CHARAS was weighed with the help of prosecution witness Raju, Ex.20, who was called with a weighing scales. The total weight of the 34 packets was found to be to the extent of 20.745 kgs. After observing necessary formalities for the seizure of the muddamal-CHARAS, as required under the law, the muddamal-CHARAS was seized. The search of the accused was also carried out by Mr. Malek in presence of Panchas, upon which he found currency notes of Rs.250/-, which was also seized. The Panchnama was, thereafter, drawn in respect of search as well as seizure of the contraband articles, as provided under law. Thus, the preliminary Panchnama, which was commenced in presence of aforesaid two Panchas, upon receipt of the secret information, came to be concluded and the said Panchnama is produced at Ex.33.

The sample of suspected CHARAS was sent to Director of

Forensic Science Laboratory for analysis and opinion, after completing requisite necessary formalities and remaining sealed muddamal articles were forwarded to the Maninagar Police Station, after affixing the seal. The complaint was lodged by P.I., Mr. Malek, and the accused came to be arrested. Special report under Section 157 of the Code was also sent. Pursuant to the complaint, the offence came to be registered by Maninagar Police Station vide C.R. No.347 of 1989. The custody of the muddamal articles and the accused came to be handed over to the Officer in charge of Maninagar Police Station.

P.I, Mr. Malek, had also submitted Special Report to his superior officer, in respect of the information and incident, on 20.12.1989, as per Ex.38 and, after producing the accused before the Chief Metropolitan Magistrate Court, Ahmedabad, claimed remand, which was granted till 24.12.1989. Accused was taken to Pali of Rajasthan for further investigation, from where one Bhakerkhan Bachhukhan Sindhi of Pali, Rajasthan, was arrested. Again, remand was sought. After the remand period was over, accused persons were sent to the judicial custody. The report of the Forensic Science Laboratory dated 19.1.1990 received by the P.I. indicated that the article seized was CHARAS. Therefore, charge sheet followed against the accused persons in the Court of Chief Metropolitan Magistrate, Ahmedabad, who, in turn, committed the case to the Sessions Court by his order dated 2.2.1990, which came to be numbered as Sessions Case No.62 of 1990.

The learned City sessions Judge, by passing an order on 26.2.1990, discharged accused No.2-Bhakerkhan and framed charge against accused-Bherulal Viraji, on 2.3.1990, at Ex.6.

The prosecution placed reliance on the evidence of following eight witnesses :-

1) P.W.1 - Rajbahadur Nathusingh Kathera, Ex.11.
2) P.W.2 - Chandrakant Chunilal Patel, Ex.12.
3) P.W.3 - Smt. Ushaben Indubhai Pujar, Ex.13.
4) P.W.4 - Rajubhai Lekhumal Ishwani, Ex.20.
5) P.W.5 - Mehboobmiya Chandmiya Shaikh, Ex.21.
6) P.W.6 - Kantilal Ravabhai Bhunaker, Ex.23.
7) P.W.7 - Khemaji Badaji Bodat, Ex.27.
8) P.W.8 - I.A. Malek, Ex.32.

The prosecution has placed reliance on the muddamal articles and the documentary evidence of complaint, to which reference would be made by us, hereinafter, as and

when required, at the later stage.

After completion of the inquiry and recording of the evidence, the accused person raised defence of total denial in his further statement under Section 313 of the Code. Accused also raised the defence that he was not present and the police, believing him to be his brother, wrongly arrested. In fact, it was contended that P.S.I. Dhabi, who had gone for investigation, at Pali, Rajasthan, desired accused that, since his brother is very young, he should not be involved and instead, accused himself should be involved and, therefore, he should go with him.

After having considered the facts and circumstances and the evidence emerging from the record of the case, the learned trial Court Judge found accused guilty for having committed offence punishable under Section 20(b)(ii) of the NDPS Act and, hence, the accused came to be sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1 lakh, in default, to undergo rigorous imprisonment for two years. The trial Court also found him guilty for the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act, 1949 and, hence, he came to be sentenced to undergo rigorous imprisonment for a period of 3 months and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for 15 days, by virtue of the impugned judgment and order recorded on 20.8.1990, which is, precisely, under challenge in this appeal under Section 374 of the Code, before us.

We have, extensively, heard learned advocate appearing for the appellant-accused, in defence, and the learned Additional Public Prosecutor. We have also gone through the entire testimonial collection and documentary evidence relied on by the prosecution.

First it may be stated that the learned advocate for the appellant-accused has raised following contentions, before us, in support of the appeal of the accused :-

(1) That there is a breach of the provisions of Section 50 of the NDPS Act, as the accused was not informed about his right to be searched in presence of a Gazetted Officer or a Magistrate;

(2) That the Investigating Officer had not reduced the secret information received by him into writing and, therefore, there is a breach of the provisions of Section 42(2) of the NDPS Act;

(3) That the Investigating Officer had not furnished the grounds of arrest after the arrest of accused and, therefore, there is a breach of provisions of Section 52(1) of the NDPS Act;

(4) That the P.I. has not sent search and seizure report to the superior authority, as required by provisions of Section 57 of the NDPS Act;

(5) That the provisions of Section 55 requiring affixation of two seals had not been complied, as a result of which, the trial stands vitiated;

(6) That the rest of the muddamal, other than the sample sent to the Director of Forensic Science Laboratory, is not proved to have been sent to Maninagar Police Station, as required; and

(7) That the Forensic Science Laboratory report is vague, as no details of modus of test are mentioned.

Most of the aforesaid contentions are being reiterated before us. In fact, the aforesaid contentions, in our opinion, do not hold any water. Those contentions are sans substance in view of the clear provisions of NDPS Act and settled proposition of law on the points. However, we would like to deal with each one of the contentions, since they are repeatedly and vociferously raised before use.

Contention No.I

The first contention is that, there is a breach of provisions of Section 50 of the NDPS Act. In that, it was contended that the Investigating Officer, who made search and seizure, did not follow the mandatory provisions of sub-section (1) of Section 50, by not affording an opportunity to exercise the optional benefit to be searched in presence of a Gazetted Officer or a Magistrate. In our opinion, in the light of the facts of the present case, this submission is meritless.

No doubt, it is true that the provisions of Section 50 are held to be mandatory. Therefore, non-observance of the statutory mandate prescribed in sub-section (1) of Section 50 of the NDPS Act would, obviously, vitiate the trial. The question, which requires to be adjudicated upon in the case, is as to whether the said provision is applicable or attracted in the factual scenario of the

case on hand. Section 50 provides and prescribes conditions under which search of persons shall be conducted. It is also mandatory. After having considered the provisions of Section 50 and the relevant facts, in our opinion, Section 50 is not attracted.

It would be expedient, at this juncture, to refer to provisions of Section 50, which reads as under :-

"50. Conditions under which search of persons shall be conducted:- (1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female."

It could very well be visualised from the provisions of sub-section (1) of Section 50 that, when the Officer duly authorised under Section 42 undertakes an exercise of search or seizure, exercising powers contemplated under Section 41, Section 42 or Section 43, is obliged to inform the accused about his statutory right to be searched in presence of a Gazetted Officer of the departments mentioned in Section 42 or a Magistrate. In our opinion, officers duly authorised under Section 42 are obliged to follow the procedure and satisfy the condition of sub-section (1) of Section 50. It is also very clear from the Legislative scheme that there is a proper and wholesome purpose and philosophy in incorporating such condition in Section 50. The fundamental object, therefore, appears to be, to see that the powers of officers of particular rank, who are empowered to make search, seizure and arrest without warrant or authorisation, are not abused or misused.

There may not be any scope for manipulation or any foul play since the proof of factum of possession of contraband article ipso facto could, statutorily, constitute a presumption of guilty conscious in respect of illicit articles and resultant evaluation of any one of the offence provided in Chapter IV of the NDPS Act.

Stringent provisions are made in the NDPS Act for effective and efficient regulation, control and checking of traffic in drugs, as it is a great menace, not only to the consumers, but also to young generation, tender and in teens, who are the future assets of the country. However, at the same time, Parliament has thought it expedient, in its wisdom, to see that the drastic powers resulting into fantastic results are employed and exercised by officers of Gazetted status, so as to, as far as possible, eliminate the possibility or a chance of fixing, manipulation and malpractice. It is in this context that the provision of Section 50 takes care of the persons, who are subjected to search, seizure or arrest. Obviously, any officer below the rank of Gazetted status is, therefore, statutorily obliged to follow provisions of Section 50 and to ensure free and fair exercise of power, to follow the provisions of sub-section (1), must take such person, without unnecessary delay, to the nearest Gazetted Officer of any one of the departments mentioned in Section 42 or to the nearest Magistrate, if, on being asked, such person so requires. This process and the Legislative scheme lends assurance that when an officer is exercising powers under the NDPS Act and who is not a Gazetted Officer, by taking the person upon his choice of being asked to the nearest Gazetted Officer or the Magistrate, that there shall be just and free process of search, seizure and arrest. It, therefore, becomes evident that this statutory mandate is attracted or is coming into play only in a case of an officer, who is duly authorised under the provisions of Section 42 and who is not a Gazetted Officer, whereas in the present case, the search was effected by a Police Inspector, who is, admittedly, enjoying a status of Gazetted Officer, as per the relevant State Government notification and, again, it was done at the behest of, under the direction of Superintendent of Police, who is still higher than the Police Inspector in hierarchy. Again, the S.P. or the P.I., for that purpose, is an empowered officer under Section 41(2) and not 42(1) of the NDPS Act. Therefore, in our opinion, the provisions of Section 50 do not come into play, with the result the first contention is devoid of any force, in fact or law.

Our view is very much reinforced by the decision of the

Honourable Apex Court in a celebrated well known decision in State of Punjab v. Balbir Singh, AIR 1994 SC 1872. The relevant proposition in this decision with regard to the provisions of Section 41, 42, 43, 50, 52 and 57 have been extensively explored and very well expounded. It is very clear from the said decision that the provisions of Section 50 lays down that, any officer, duly authorised under Section 42, who is about to search any person, exercising powers of the provisions of Section 41, 42 and 43, shall, if such person so requires, take him, without unnecessary delay, to the nearest Gazetted Officer of any of the departments mentioned in Section 42 (emphasis supplied) or to the nearest Magistrate, if such requisition is made by the person to be searched. The concerned officer can detain him until he is produced before such Gazetted Officer or Magistrate. After such production, the Gazetted Officer or the Magistrate, as the case may be, finds no reasonable ground for search, could discharge the person. But, otherwise, he shall direct the search to be made.

In the aforesaid Balbir Singh's case, it has been clearly propounded that, if a police officer, without any prior information as contemplated under the provisions of the NDPS Act, makes a search or arrest of a person, in the normal course of investigation into an offence or suspected offence, as provided under the provisions of the Code of Criminal Procedure, and when search is completed, at this stage, Section 50 of the NDPS Act will not be attracted and the question of complying with the requirements thereunder, obviously, would not arise. However, if during such search or arrest, there is chance of recovery of any narcotic drug or psychotropic substance, then the police officer, who is not empowered, should inform the empowered officer, who should, thereafter, proceed in accordance with the provisions of the NDPS Act. If he himself happens to be an empowered officer, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act. It, therefore, becomes clear that the assurance test envisaged by Section 50 needs to be undergone by an officer duly authorised under the provisions of Section 42. In other words, the Gazetted Officer or any Officer higher in rank that of the status of a Gazetted Officer empowered under the provisions of Section 40(1)(2) is not obliged to follow the provisions of Section 50. The proposition which we are examining and accepting, considering the provisions of Section 50 read with Sections 41, 42 and 43 of the NDPS Act is, thus, succinctly, established in Balbir Singh's case (supra).

Again, this Court had an occasion to consider this proposition of law and, in a Division Bench decision in Mohmad Pathan v. State of Gujarat, 1998 (1) GLR 445, has accepted this proposition and interpretation. In that case, it has been specifically held that the officers mentioned in Section 50 of the NDPS Act, who are not Gazetted Officers, would have to comply with the mandatory provisions of Section 50, but the officers, who are Gazetted Officers, would not have to comply with the provisions of Section 50. It is also held by this Court in that case that there is no question of any violation of provisions of Section 50 of the NDPS Act, merely, because accused was not questioned whether he wanted to be searched or examined in presence of a Gazetted Officer or a Magistrate, when the raid or search is effected by a Gazetted Officer. In this decision, the reliance is placed on our earlier decision in D.B. Thakore v. State of Gujarat, 1996(1) GLR 219. Thus, our view is very much reinforced by the said decisions. In the circumstances, the first contention is, totally, meritless.

Contention No.II

The submission that the information received by the Police Officer was not reduced into writing and, thereby, infraction of the provisions of Section 42(2) is also without any substance, in view of the aforesaid decision and the plain perusal of the provisions of Section 42. Factually, as such, this contention is not correct. It is true that the concerned Police Inspector has not articulated the information in black and white, as per his evidence. However, that does not help the defence. What is required under sub-section (2) of Section 42 is, when an officer takes down any information, in writing, under sub-section (1) or records grounds for his belief under the proviso thereto, he shall, forthwith, send a copy thereof to his immediate superior officer. It is, therefore, obligatory only in a case when an officer, duly authorised under Section 42(1), who is not a Gazetted Officer, receives such communication or information. However, it cannot be contended that this provision of Section 42(1) is required to be complied with even in a case of an officer, who is a Gazetted Officer under Section 41(2). It can safely be deduced from the underlying design and it has to be appreciated in the context of the provisions of sub-section (1) of Section 42 that an officer, who is not a Gazetted Officer, or an officer, who is working under an officer exercising powers under Section 42(1), is obliged to follow provisions of sub-section (2) of Section 42. It

is obvious, again, this sub-section (2) of Section 42 is a sequel to the end of securing free and fair inquiry or exercise of powers by officer, who is not a Gazetted Officer or, in other words, who is an officer under Section 42(1). A plain perusal of the statutory device and design makes it abundantly clear that it shall not apply in a case of exercise of the powers of search and seizure by any such officer of Gazetted rank, as contemplated under sub-section (2) of Section 41. Therefore, in our opinion, the second contention is unsustainable and must fall to the ground.

Contention No.III

The third contention raised was that the grounds of arrest had not been disclosed to the accused. This submission is factually, unfortunately, incorrect and receives no acknowledgement from the facts. We have successfully noticed in the evidence of Police Inspector, Mr. Malek, at Ex.32, that, immediately, after effecting the arrest of the accused, the grounds thereof were communicated and conveyed to the accused. Therefore, there would not arise any question of infraction of any provisions of sub-section (1) of Section 52, with the result, the third contention is also meritless and, hence, it is rejected.

Contention No.IV

It was urged that the Police Inspector has failed to comply with the provisions of Section 57, as he had not sent the report of seizure to the superior authority. It is true that Section 57 prescribes that, whenever any person makes any arrest or seizure under the NDPS Act, he shall, within 48 hours next after such arrest or seizure, make a full report of the particulars of such arrest or seizure to his immediate official superior. It was contended that there is a breach of Section 57, which is mandatory. We may, again, state that this submission is not correct and sustainable, factually and legally. The special report contemplated by the provisions of Section 57 had been sent and it is quite manifest from the testimony of P.I., Mr. Malek, at Ex.32. The special report dated 20.12.1989, addressed to Additional Police Commissioner by the Police Inspector, produced at Ex.37, totally, dispels the submission, on facts. The special report under Section 57, Ex.37, was sent on the very next day, without any loss of time. Again, it has been held that the provisions of Section 52 and 57 of the NDPS Act are not mandatory. No question would arise, in the present case, as to whether any prejudice has been caused

in not following the directory provisions. Therefore, it would not be necessary for us to go into it, at this stage. We, therefore, find this contention, legally and factually, wrong, incorrect and not sustainable.

Contention No.V, VI and VII

It was canvassed before us, on behalf of the accused that the provisions of Section 55 of the NDPS Act were not observed, in view of the evidence on record. We are sorry to say that this submission is also, factually, wrong and incorrect. It is very clear from the evidence of P.I. and other concerned Police Officers that the samples of muddamal CHARAS had been sent to the Forensic Science Laboratory and also to the Officer in-charge of Police Station, after affixing the required seal to such articles. This is also very apparent from the evidence of the Panch witness. The contention that two seals were not affixed in terms of the provisions of Section 55 is also not correct and proper in the light of the facts of the present case. The question of affixation of two seals, as mandated by the provisions of Section 55, will be necessary to be applied only when the seized articles or the samples of the contraband articles are collected and sent to a Police Station by officer of a department, other than the one the Authorised Officer comes from. The Officer in-charge of Police Station is obliged to take the charge of and keep in safe custody all articles seized under the NDPS Act, pending the orders of the Magistrate, within the local area of that Police Station and which may be delivered to him, and shall allow any officer who may accompany such articles to the Police Station to affix his seal to such articles or to take samples of and from them, and all samples taken from such articles shall also be sealed with the seal of the officer in-charge of the Police Station. The factual scenario emerging from the record of the present case does not warrant affixation of two seals as, while making the Panchnama after necessary procedure had been followed, the Police Inspector had put his own seal and it was sent to his own Police Station, at Maninagar. The question of affixation of two seals on a seized muddamal article would arise only in the event of the Investigating Officer happens to be an officer of the Police Station other than where the seized articles are sent. In the present case, P.I., Mr. Malek, who affixed his seal, i.e. the seal of Maninagar Police Station, did not require to affix the seal again while placing in the safe custody of the same articles in same Police Station. Therefore, in our opinion, contentions No.V, VI and VII are also misconceived. Therefore, they are rejected.

Contention No.VIII

Lastly, it was contended that report of the Forensic Science Laboratory is vague. After having considered the entire evidence, in general, and the evidence of prosecution witness No.3- Ms. Usha I. Pujara, Ex.13., and the Forensic Science Laboratory reports, Ex.15 and 16, in particular, we are satisfied that it is not the report that is vague, but the submission itself is vague and uncertain. It, manifestly, demonstrates improper application of mind to the evidence of Forensic Science Laboratory Scientist, Ms. Pujara, P.W.3, Ex.13, and the reports, at Ex.15 and 16.

The trial Court found the accused guilty for having committed offence punishable under Section 39(b(ii) of the NDPS Act and also under Section 66(1)(b) of the Bombay Prohibition Act, 1949. We are in complete agreement with the conclusions reached by the learned Additional City Sessions Judge in view of the evidence on record that the article seized from the possession of the accused was CHARAS, which is an illicit and contraband substance. The accused is, rightly, held guilty for the said offence and again, he is, rightly, sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1 lakh, in default, to undergo rigorous imprisonment for a further period of two years, for the offence under Section 20(b)(ii) of the NDPS Act, and to undergo rigorous imprisonment for a period of three months and to pay fine of Rs.500/-, in default, to undergo further rigorous imprisonment for 15 days, for the offence under Section 66(1)(b) of the Bombay Prohibition Act, 1949. The punishment imposed by the trial Court cannot be questioned, being justified. However, in our opinion, it is on a lenient side. In the circumstances, the halfhearted contention that the imposition of further period of two years' rigorous imprisonment, in default of payment of fine of Rs.1 lakh, is too harsh, requires to be, wholeheartedly, rejected. Section 20(b)(ii) prescribes minimum term of imprisonment of 10 years, which may extend to 20 years. Again, minimum amount of imposition of penalty of fine shall not be less than Rs.1 lakh and, again, it may extend to Rs. 2 lakhs. Even Court is empowered to impose fine exceeding Rs.2 lakhs in a given case, after recording reasons in that behalf. The deterrent punishment policy enshrined in the NDPS Act, in such cases, is fully justified as the offender, in case of drug trafficking, is not only a great hazard to his own health, but is equally hazardous to the health of the society and, more

so, to the health of vulnerable youths. The drug trafficking, as such, is increasing not by leaps and bounds, but to an alarming extent, endangering the lives of many and, thereby, contributing substantial menace to moral, ethical and social fibre. It is in this context that drastic provisions for punishment were called for and the Parliament has, rightly, in its wisdom, provided. Again, in the case on hand, as revealed from the evidence, the accused was found possessed of 20.745 kgs. of contraband illicit narcotic drug, which could have taken toll of many persons and it would be nobody's guess as to how many would have been endangered in this illegal drug trafficking. That is the reason why we are constrained to observe that, in the present case, the imposition of sentence and the fine by the trial Court is leaning to liberal side and, by no stretch of imagination, it could be said to be excessive or harsh, as submitted on behalf of the defence. In fact, the trail Court has imposed the minimum penalty. In fact, we are surprised, as to what prompted the learned defence advocate to consider reduction of the period of imposition of imprisonment in default clause.

After having drawn in to scale all the aforesaid contentions and submissions raised before us on behalf of the defence and the relevant proposition of law, in the background of the factual scenario emerging from the record of the present case, we are satisfied that the impugned order is, fully, justified except that by imposing minimum penalty, the trial Court has leaned more on a liberal side. The net result is that, this appeal, at the instance of the appellant-original accused, a drug trafficker, must embrace dismissal and, accordingly, it is dismissed.

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